

JOHN H. DONBOLI (SBN: 205218)
E-mail: jdonboli@delmarlawgroup.com
DEL MAR LAW GROUP, LLP
12250 El Camino Real, Suite 120
San Diego, CA 92130
Telephone: (858) 793-6244
Facsimile: (858) 793-6005

JONATHAN W. CUNEO
Email: jonc@cuneolaw.com
TAYLOR ASEN
Email: tasen@cuneolaw.com
CUNEO GILBERT & LaDUCA, LLP
507 C Street, NW
Washington, DC
Telephone: (202) 789-3960
Facsimile: (202) 789-1813

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GARY HOFMANN, an individual and
on behalf of all others similarly situated,

Plaintiff,

FIFTH GENERATION, INC., a Texas
corporation; and DOES 1 through 100,
inclusive,

Defendants.

MARC CABRERA, an individual and on
behalf of the general public,

Plaintiff,

vs.

FIFTH GENERATION, INC.,

Defendant.

Civil Action No.: 3:14-cv-02569-JM-JLB

Related to: 3:14-cv-02990-JM-JLB

CLASS ACTION

**PLAINTIFF GARY HOFMANN'S
RESPONSE IN OPPOSITION TO
COUNTER-MOTION TO
APPOINT INTERIM CO-LEAD
COUNSEL**

Date: June 15, 2015
Time: 10:00am
Courtroom: 5D
Judge: Hon. Jeffrey T. Miller

TABLE OF CONTENTS

| | | |
|------|---------------------------------------------------------------------------------------------------------------------------------------------|----|
| I. | INTRODUCTION..... | 1 |
| II. | LEGAL ARGUMENT | 3 |
| A. | Legal Standard..... | 3 |
| 1. | CGL and DMLG Have Taken Significant Step to Advance this Litigation..... | 4 |
| 2. | CGL and DMLG’s Significant Experience Handling Class Actions, Other Complex Litigation, and Claims of the Type Asserted in This Action..... | 7 |
| a. | CGL..... | 7 |
| b. | DMLG..... | 9 |
| 3. | CGL and DMLG Have Significant Experience with the Applicable Law..... | 10 |
| 4. | CGL and DMLG Have the Resources Necessary to Advance this Litigation..... | 11 |
| B. | This Court Should Not Appoint Four Separate Firms as Interim Co-Counsel..... | 11 |
| III. | CONCLUSION..... | 12 |

TABLE OF AUTHORITIES

Page(s)

Federal Cases

| | |
|---------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <i>In re Jones Soda Co. Sec. Litig.</i> , No. C07-1366RSL, 2008 WL 418002, at *3 (W.D. Wash. Feb. 12, 2008) | 6 |
| <i>In re Cathode Ray Tube (CRT) Antitrust Litigation</i> , No. 07-5944 SC, 2008 WL 2024957, at * 1 (N.D. Cal. May 9, 2008) | 11, fn 4 |
| <i>Levitte v. Google, Inc.</i> , Nos. 08-03369, 08-03452, 08-03888, 08-04701, 2009 WL 482252, at *2 (N.D. Cal. Feb. 25, 2009)..... | 11-12, fn 4 |
| <i>Parkinson v. Hyundai Motor Am.</i> , 2006 WL 2289801, No. C06-0345 AHS, slip op. at *2 (C.D. Cal. Aug. 7, 2006)..... | 4 |
| <i>Sparano v. Lief</i> , No. 10CV2079 BTM BLM, 2011 WL 830109, at *2 (S.D. Cal. Mar. 3, 2011). | 4 |

Federal Rules of Civil Procedure

| | |
|---------------------|---|
| Rule 23(g)(3) | 3 |
|---------------------|---|

1 **I. INTRODUCTION**

2 As set forth in Plaintiff Gary Hofmann’s underlying Motion to Consolidate
3 [Docket No. 21], there are two related class action lawsuits (the “Actions”)
4 presently pending in the Southern District of California courts:

- 5 1. *Gary Hofmann v. Fifth Generation, Inc. and Does 1-100*, No. 3:14-cv-
6 02569 (S.D. Cal.) (“the *Hofmann* Action”), and
- 7 2. *Marc Cabrera v. Fifth Generation, Inc.*, No. 3:14-cv-02990 (S.D. Cal.)
8 (“the *Cabrera* Action”).

9 Plaintiff Hofmann seeks to represent a putative class consisting of all
10 persons situated within the United States who purchased Tito’s Handmade Vodka,
11 as well as a subclass of persons of California consumers who purchased the
12 Handmade Vodka, while Plaintiff Cabrera seeks to represent a putative class
13 consisting of only persons situated in California who purchased Tito’s Handmade
14 Vodka. The *Hofmann* and the *Cabrera* cases assert nearly identical claims based
15 on Fifth Generation’s unlawful misrepresentations that its vodka is “Handmade.”

16 The *Hofmann* Action was filed in San Diego Superior Court on September
17 15, 2014 and removed to this Court on October 28, 2014 by way of Defendant’s
18 Notice of Removal [Docket No. 1]. The *Hofmann* Action was the first action filed
19 in the United States against Defendant, which led to a rash of copycat filings across
20 the country.¹ Such copycat filings are unfortunately routine in the current class
21 action landscape. However, the filing of the *Cabrera* Action is an especially
22 puzzling situation because Plaintiff Cabrera, over three months after the
23 commencement of the *Hofmann* Action, filed suit *in the same judicial district*
24 where the Hofmann Action was pending. When the *Cabrera* Action was filed,

25 ¹ Putative class actions were filed against Fifth Generation, Inc. for the same conduct
26 detailed in the Hofmann Complaint shortly after the *Hofmann* Action was first filed, in federal
27 courts in the following states: Florida (on September 25, 2014), Illinois (October 7, 2014), New
28 Jersey (October 24, 2014), California (again by way of the *Cabrera* Action) (December 22,
2014), Nevada (January 26, 2015), Massachusetts (April 3, 2015), and New York (April 17,
2015).

1 Defendant had already filed its Motion to Dismiss [Docket No. 8], and the
 2 *Hofmann* case was well underway.²

3 Those plaintiffs who filed copycat suits in other states might have colorable
 4 (if dubious) arguments that particular home-state statutes render their suits distinct
 5 and provide possible benefits to consumers that the *Hofmann* Action fails to
 6 provide. But no such argument can be made in this case. In fact, it is hard to see
 7 how the Class here benefits from having a third and fourth law firm (i.e., the two
 8 firms representing Plaintiff Cabrera) be designated as interim co-counsel in
 9 addition to the two firms already representing Plaintiff Hofmann in the *Hofmann*
 10 Action.

11 All of the claims in these Actions concern the conduct of a single defendant
 12 (Fifth Generation, Inc.). Pre-certification fact discovery is likely to be focused on
 13 a handful of issues. Appointment of two separate groups of attorneys as interim
 14 co-counsel is not only unnecessary, but would likely result in waste, potential
 15 duplication of effort and billing, and needless complications in the prosecution of
 16 the case.

17 Plaintiff Hofmann originally proposed that two firms be appointed as interim
 18 co-counsel in its underlying Motion to Consolidate (the law firms of Cuneo Gilbert
 19 & LaDuca, LLP (“CGL”) and Del Mar Law Group (“DMLG”)). Adding two
 20 additional law firms at this time is unnecessary and provides no value to the Class.
 21 Quite the contrary, it will harm the Class. Moreover, appointing Plaintiff
 22 Cabrera’s attorneys as interim co-counsel would not only adversely affect the Class
 23 in this case, but those in future class actions as well because this Court would be
 24

25 ² Counsel for Plaintiff Cabrera make identical assertions in both of their supporting
 26 declarations that they “conducted significant independent investigation and analysis” prior to the
 27 filing of the Cabrera Action. See Declaration of Abbas Kazerounian, dated May 18, 2015, at ¶
 28 15 and Declaration of Joshua Swigart, dated May 18, 2015, at ¶ 10. [Docket No 28, #1 and #2
 thereto]. Such statements, along with the patent similarity between the *Cabrera* and *Hofmann*
 complaints, foreclose the possibility that they were unaware of the *Hofmann* Action at the time
 the *Cabrera* Action was filed.

indirectly encouraging the duplication of existing class action complaints by attorneys hoping to commandeer cases from the original attorneys that spent the time and energy developing the legal theories and causes of action. Such duplicative suits not only add no value to a class, but discourage counsel from putting effort into developing suits.

Again, and as set forth in greater detail in the underlying Motion to Consolidate, CGL and DMLG (and only CGL and DMLG) should serve as Interim Co-Counsel because: (1) their investigations and industriousness led to the commencement of this litigation and its survival in the face of a formidable motion to dismiss from Defendant's counsel; (2) they are experienced class action attorneys who work well together; (3) they are collectively leaders in litigating class actions concerning consumer fraud, particular those brought under California law; and (4) they have the resources to diligently litigate these Actions to their conclusions.

II. ARGUMENT

A. Legal Standard

As this Court is well aware, Federal Rules of Civil Procedure ("FRCP") Rule 23(g)(3) provides that a court "may designate interim counsel to act on behalf of the putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23(g)(3). Where, as here, there are multiple class actions pending, appointment of interim class counsel "is necessary to protect the interests of class members" because it "clarifies responsibility for protecting the interests of the class during precertification activities, such as making and responding to motions, conducting any necessary discovery, moving for class certification, and negotiating settlement." *MCL*, § 21.11.

Attorneys appointed to serve as interim class counsel "must fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(4). Although Rule 23 does not explicitly state what standards apply when appointing interim

1 class counsel, courts have applied the following factors set forth in Rule
 2 23(g)(1)(A): (1) the work counsel has done in identifying or investigating potential
 3 claims in the action; (2) counsel's experience in handling class actions, other
 4 complex litigation, and claims of the type asserted in the action; (3) counsel's
 5 knowledge of the applicable law; and (4) the resources counsel will commit to
 6 representing the class. *See Parkinson v. Hyundai Motor Am.*, 2006 WL 2289801,
 7 No. C06-0345 AHS, slip op. at *2 (C.D. Cal. Aug. 7, 2006). Other factors to
 8 consider include "the vigorousness of the prosecution of the lawsuits." *Sparano v.*
 9 *Lief*, No. 10CV2079 BTM BLM, 2011 WL 830109, at *2 (S.D. Cal. Mar. 3, 2011).
 10 No single factor is determinative; all factors must be considered. Advisory
 11 Committee Notes (2003 Amendments).

12 As set forth below, CGL and DMLG satisfy each of these criteria and are
 13 committed to fairly and adequately representing the interests of the class.

14 ***1. CGL and DMLG Have Taken Significant Step to Advance this***
 15 ***Litigation***

16 CGL and DMLG are the first attorneys to take any steps to investigate
 17 Plaintiff Hofmann's claims and to advance this litigation. CGL and DMLG filed
 18 the first suit in the nation alleging that Fifth Generation deceptively labeled and
 19 advertised Tito's Handmade Vodka, filing months before the *Cabrera* action was
 20 filed. In so doing, CGL and DMLG conducted the initial factual and legal research
 21 upon which the cases are based. CGL and DMLG have also begun the process of
 22 speaking with potential experts. In addition, CGL and DMLG vigorously opposed
 23 Fifth Generation's motion to dismiss the *Hofmann* case, devoting numerous hours
 24 to ensuring that all of Hofmann's claims survived. By contrast, Fifth Generation
 25 simply answered in the *Cabrera* action, having learned from its attempt to dismiss
 26 the *Hofmann* Action that moving to dismiss the *Cabrera* Action would be futile.
 27 Thus, CGL and DMLG not only laid the original groundwork for these cases to be
 28 brought; they also expended a significant amount of time and resources ensuring

1 that the cases would proceed to discovery.

2 Plaintiff Cabrera suggests that his action is not a mere copy of the Plaintiff
3 Hofmann's, but one of several class actions filed by Plaintiff Cabrera's attorneys
4 premised upon similar theories of fraud. But Plaintiff Hofmann commenced this
5 action well before Plaintiff Cabrera's attorneys filed any of these similar cases.³
6 Indeed, to Plaintiff Hofmann's knowledge, there was no "Handmade" litigation in
7 the country against any alcohol manufacturer prior to the filing of the *Hofmann*
8 Action on September 15, 2014.

9 Moreover, the *Cabrera* Action utilizes a Complaint that has major sections
10 of *Hofmann* Complaint copied therein. For example, Paragraph 16 and 17 (and the
11 related footnotes) in the *Cabrera* Complaint are nearly identical to sections in the
12 *Hofmann* Complaint:

13
14 Hofmann Complaint, ¶ 11:
15 On information and belief, the
16 Vodka was made, manufactured
17 and/or produced in "massive
18 buildings containing ten floor-to-
19 ceiling stills and bottling 500 cases
20 an hour" 2 using automated
21 machinery that is the antithesis of
22 "handmade" and that is in direct
23 contradiction to both the
24 "Handmade" representation and the
"Crafted in an Old Fashioned Pot
Still" representation on the product.
Discovery will further reveal the
specific automated manner in
which the Vodka is made.

Cabrera Complaint, ¶ 16:
However, on information and belief,
Defendant's vodka was and is not
"Handmade," but rather manufactured
and/or produced in "massive buildings
containing ten floor-to-ceiling stills" and
"bottling 500 cases an hour" through the use
of a mechanized and/or automated process,
in contradiction of
Defendant's claims prominently displayed
on the label of its product that its vodka is
"Handmade" and "Crafted in an Old
Fashioned Pot Still."¹ Defendant's vodka is
simply not "Handmade" as Defendant
advertised to Plaintiff and other consumers
similarly situated.²

25 ³ *Nowrouzi, et al v. Maker's Mark Distillery, Inc.*, No. 3:14-cv-02885-JAH-NLS (S.D.
26 Cal.) was filed on December 8, 2014 and *Welk v. Beam Suntory Import Co., et al*, No. 3:15-cv-
27 00328-LAB-JMA (S.D. Cal.) was filed on February 17, 2015. It is worth noting that, for reasons
28 too complicated to detail here, these actions—though based on a similar theory as this one—are
not nearly as strong as this case. Indeed, as Defendants noted in their submission, a court has
already dismissed one action against Beam Suntory Import Co., which is essentially identical to
the *Welk* case.

| | |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | |
| 2 3 4 5 6 7 | <p>Hofmann Complaint, Image of Product:</p>  |
| 8 9 10 11 12 13 14 15 16 | <p>Hofmann Complaint, Footnote 2: A 2013 article in Forbes magazine noted that the Forbes photographer was purposefully directed away by the Tito's brand manager from "massive buildings containing ten floor-to-ceiling stills and bottling 500 cases an hour and into the shack with the original still, cobbled from two Dr. Pepper kegs and a turkey-frying rig to cook bushels of corn into booze."</p> |
| 17 18 19 20 21 | <p>Cabrera Complaint, Footnote 1: An article appearing in the July 15, 2013 issue of Forbes Magazine entitled "The Troubling Success of Tito's Handmade Vodka" noted that the Forbes photographer was purposefully directed away by the Tito's brand manager from "massive buildings containing ten floor-to-ceiling stills and bottling 500 cases an hour and into the shack with the original still." (http://www.forbes.com/sites/meghancassery/2013/06/26/haunted-spirits-the-troublingsuccess-of-titos-handmade-vodka)</p> |
| 22 23 24 25 26 27 28 | <p>Hofmann Complaint, Footnote 1: The Oxford Dictionary defines the term "handmade" as "[m]ade by hand, not by machine, and typically therefore of superior quality."</p> <p>Merriam-Webster Dictionary defines the term "handmade" as "made with hands or by using hand tools" and Oxford Dictionary defines "handmade" as "made by hand, not by machine, and typically therefore of superior quality."</p> <p>A second plaintiff's borrowing significant from the first plaintiff's complaint militates against the former being appointed lead counsel. <i>See In re Jones Soda Co. Sec. Litig.</i>, No. C07-1366RSL, 2008 WL 418002, at *3 (W.D. Wash. Feb. 12, 2008) [noting that, "in light of the allegation that the Banner complaint was copied from a complaint previously filed on behalf of another party, a determination of the appropriate lead counsel must include an inquiry into which counsel drafted the complaint and whether sufficient effort went into that undertaking"].</p> |

1
2 **2. CGL and DMLG's Significant Experience Handling Class**
3 **Actions, Other Complex Litigation, and Claims of the Type**
4 **Asserted in This Action**

5 CGL and DMLG possess a wealth of litigation experience. Combined, the
6 two firms have successfully led large, multidistrict litigation and have
7 demonstrated an ability to organize and manage large litigation (cooperatively with
8 counsel for all of the involved parties). Other federal courts have recognized as
9 much by appointing these attorneys to leadership positions in other MDLs and
10 class actions, including consumer class actions. The law firms have worked
11 together cooperatively and productively in other complex class actions, including
12 other consumer cases, and will form an efficient and highly skilled group to
13 represent the Plaintiff and Class members in this action. Declaration of John H.
14 Donboli dated ("Donboli Decl."), at ¶ 2, fn1. [Docket No. 21, #3 thereto].

15 **a. CGL**

16 CGL has extensive experience leading and managing complex litigation.
17 CGL devotes the majority of its practice to the representation of clients involved
18 in consumer protection, antitrust, securities, corporate governance, and products
19 liability complex and class action litigation. The firm has achieved success for a
20 range of clients, by: helping to recover billions of dollars in shareholder litigation,
21 obtaining compensation for Holocaust survivors, working to recover hundreds of
22 millions of dollars for homeowners with defective construction materials, and, in
23 several jurisdictions, ending the unconstitutional practice of jails' subjecting
24 minor law violators to unnecessary strip searches. The firm has years of
25 experience litigating and prosecuting complex class action such as this case,
26 including such cases as the *Enron Securities Litigation* where the litigation
27 recovered more than \$7 billion for defrauded investors and CertainTeed's
28 defective organic shingles litigation where the firm served as Co-lead Counsel in
an MDL that secured a settlement valued at more than \$700 million.

Jonathan W. Cuneo, the partner overseeing this litigation for CGL, has served as counsel in a number of significant cases including:

- *Mangini v. RJ Reynolds Tobacco Company*, 7th Cal. 4th 1057
(The first case to challenge the “Joe Camel” advertising campaign, resulting in the public release of documents showing the targeting of children. Congressman Henry Waxman referred to the attorneys as American heroes for their role in release of these documents.)
- *Dennis v. Metromail*, Texas Dist. Ct., No-9604451
(One of the most significant privacy cases in United States history, involving an information company contracting with Texas inmates to process private information.)
- *In re Enron Corp. Sec. Litig.*, S.D. Tex., No. H-01-3624
(Washington Counsel in litigation resulting in over \$7 billion recovery, the largest recovery in securities fraud in history.)
- *Rosner, et al. v. United States*, S.D. Fla., No. 01-cv-1859
(The so-called “Gold Train” case, which involved the looting of the personal assets of Hungarian Holocaust victims and survivors by the United States Army after World War II, resulting in a statement of acknowledgement by the government and a \$25.5 million settlement.)
- *Galanti, et al. v. The Goodyear Tire & Rubber Company*, D.N.J., No. 03-cv-209 (\$340+ million recovery on behalf of homeowners who purchased allegedly defective radiant heating systems. Significantly, in CGL’s role as lead counsel, it brought together over 20 law firms and three factions over a year and a half to forge a bi-national global settlement that was approved from the bench.)
- *Kwikset Corporation, et al. v. The Superior Court of Orange County, James Benson et al., Real Parties in Interest*, 51 Cal 4th 310 (2011))
(clarifying the reach of California’s Unfair Competition Law,

California Business and Professions Code sec. 17200. This California Supreme Court opinion is one of the most significant consumer protection opinions in the state.)

- *In re Automotive Wire Harness Systems Antitrust Litigation*, Case No. 2:12-md-02311-MOB (E.D. Mich. August 7, 2012) (Co-lead counsel representing auto dealers in more than 25 putative class actions.)
- Mr. Cuneo and CGL have also successfully represented California cities and counties, and the State of West Virginia.

Working alongside Mr. Cuneo is Taylor Asen, who brings the valuable added perspective of having also served as a law clerk to two federal judges, and who has worked on a variety of consumer fraud class actions in California and elsewhere.

b. DMLG

DMLG is a consumer class action law firm situated in San Diego, California with significant experience litigating complex consumer class actions. John H. Donboli, the partner personally overseeing this case for DMLG, has been certified as class counsel in multiple California class action cases, including but not limited to:

- *Cleary v. Door to Door Storage, Inc.*, San Diego Superior Court ("SDSC"), Case No. GIC875359;
- *Goestl v. Thunder Power, Inc.*, SDSC, Case No. GIC879513;
- *Stewart v Channellock*, SDSC, Case No. 37-2008-00081963-CU-BT-CTL;
- *Paz v. Lights of America, Inc.*, SDSC, Case No. 37-2009-00091565-CU-BT-CTL;
- *Card v Bell Sports, Inc.*, SDSC, Case No. 37-2010-00083292-CU-BT-CTL.
- *Chambers v. Weber-Stephen Products, LLC*, SDSC, Case No. 37-

2011-00085919-CU-BT-CTL;

- *Paz v. Ideal Industries, Inc.*, SDSC, Case No. 37-2011-00087389-CU-BT-CTL;
- *Clark v The Nutro Company*, SDSC, Case No. 37-2011-00090424-CU-BT-CTL;
- *Hecht-Nielsen v. Lifetime Products, Inc.*, SDSC Case No. 37-2011-00089380-CU-BT-CTL; and
- *Kimberly Card v. Party City Corporation et al.*, SDSC Case No. 37-2012-00084838-CU-BT-CTL.

Donboli Decl., ¶ 2.

3. *CGL and DMLG Have Significant Experience with the Applicable Law*

As described more fully above and in the previously filed declarations of Messrs. Cuneo and Donboli filed in support of the underlying Motion to Consolidate in the *Hofmann* Action, CGL and DMLG have substantial experience in handling complex litigation. Having served as lead counsel of MDL litigations and class actions, these two firms are well-versed in the issues related to Rule 23 class certification, large discovery plans, negotiating settlements, or trying the case to verdict if necessary.

Further, CGL and DMLG are highly familiar with California law, as well as the consumer protection laws of the other states. As such, CGL and DMLG possess the unique experience to defend the interests of both the Nationwide and California putative classes. In regards to California consumer protection laws (the violation of which is raised by both Plaintiffs Hofmann and Cabrera), Mr. Cuneo is especially well-versed as to California law because he is not only one of the top lawyer in the country (in general), but Mr. Cuneo litigated California class action cases through trial and all the way through two California Supreme Court hearings and a decision by the California Supreme Court (i.e., *Kwikset Corp. v. Superior*

1 *Court*, 51 Cal. 4th 310 (2011)) that is the leading California Supreme Court case to
 2 interpret California's Unfair Competition Law (B&P Section 17200) which is at
 3 issue in these cases. Mr. Donboli has similarly litigated numerous consumer fraud
 4 actions in California. Donboli Decl., at ¶ 2.

5 **4. *CGL and DMLG Have the Resources Necessary to Advance***
 6 ***this Litigation***

7 As stated previously, these two firms have served in leadership roles in
 8 various class actions, as well as other complex and resource-intensive litigations,
 9 and are knowledgeable about the resources necessary to adequately litigate this
 10 type of case. As demonstrated by their successful prosecution of other class
 11 actions, they have the necessary resources to prosecute this action and will devote
 12 those resources to the prosecution of this action in a manner that best serves the
 13 interests of the class members. CGL and DMLG are well-established firms with
 14 the financial wherewithal to comfortably support the litigation without the risk of
 15 putative class members being detrimentally impacted by resource constraints
 16 suffered by counsel.

17 CGL and DMLG are fully committed to allocating the attorney time and
 18 resources necessary to successfully litigate this case to a resolution in the best
 19 interests of the putative class members, while also cognizant of the fact that the
 20 unnecessary expenditure of time and resources harms the putative class.

21 **B. This Court Should Not Appoint Four Separate Firms as Interim**
 22 **Co-Counsel**

23 Plaintiff Hofmann recognized prior to the filing of the Motion to Consolidate
 24 that some California courts actually rejected applications for appointment of
 25 multiple firms as interim co-counsel.⁴ That being said, Plaintiff Hofmann believes

26 _____
 27 ⁴ For example, in *In re Cathode Ray Tube (CRT) Antitrust Litigation*, No. 07-5944 SC,
 28 2008 WL 2024957, at * 1 (N.D. Cal. May 9, 2008), the court appointed a single firm as interim
 class counsel despite requests for appointment of multiple firms as "co-lead counsel." Similarly,
 in *Levitte v. Google, Inc.*, Nos. 08-03369, 08-03452, 08-03888, 08-04701, 2009 WL 482252, at

1 that the two-firm appointment of CGL and DMLG is in the best of interests of the
 2 Class. The appointment of four separate law firms, however, to serve as interim
 3 co-counsel would be stretching things too far.

4 Again, appointing two firms (CGL and DMLG) is more than enough to
 5 represent the putative class. The factual and legal issues in the case are easily
 6 handled by these two firms. There are only two named plaintiffs, both of whom
 7 allege essentially the same causes of action under California consumer fraud
 8 statutes.⁵ All of the plaintiffs' claims arise from the same factual allegations. Fifth
 9 Generation, Inc. the only defendant in both cases. The conduct on which the claims
 10 are based is identical (marketing and selling vodka in the United States with an
 11 unlawful "Handmade" label). The proposed class is limited to a finite group of
 12 consumers who purchased Fifth Generation, Inc.'s TITO'S Brand Handmade
 13 Vodka. Moreover, pre-certification factual discovery is not likely to be
 14 burdensome or voluminous. There is simply no need for four separate law firms to
 15 serve as interim co-counsel.

16 **III. CONCLUSION**

17 In the interests of judicial economy and for the reasons set forth above,
 18 Plaintiff respectfully requests that this Court deny Plaintiff Cabrera's Counter-
 19 Motion to have the law firms of Kazerouni Law Group, APC and Hyde & Swigart

20 ///

21 ///

22 ///

23 ///

24 *2 (N.D. Cal. Feb. 25, 2009), the court found that "although Plaintiffs contend that the scope of
 25 the proposed consolidated action favors a multi-firm structure...the putative class will benefit
 26 from having a single firm conduct the pre-class certification aspects of the litigation."

27 ⁵ The *Hofmann* Action includes a cause of action for violations of the California
 28 Consumers Legal Remedies Act that is not included in the *Cabrera* Action and the *Cabrera*
 Action includes a cause of action for Intentional Misrepresentation (California common law) that
 is not included in the *Hofmann* Action.

1 to serve as interim co-counsel.

2 Dated: June 1, 2015

DEL MAR LAW GROUP, LLP

3
4 By: /s John H. Donboli
JOHN H. DONBOLI
5 DEL MAR LAW GROUP, LLP
6 Attorney for Plaintiff GARY
HOFMANN and all others similarly
7 situated

8 CUNEO GILBERT & LaDUCA, LLP

9
10 By: /s Jonathan W. Cuneo
JONATHAN W. CUNEO
11 TAYLOR ASEN
12 Attorneys for Plaintiff GARY
HOFMANN and all others similarly
13 situated